MONTANA LEGISLATIVE HISTORY

Chapter 509 1979

Bill H 836 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 20	✓ C	Hearing Date(s) Mar 09	✓ C
_____	____ C	Mar 12	✓ C
_____	____ C	Mar 19	✓ C
_____	____ C	_____	____ C
Date Out Feb 20	✓ C	Mar 19	✓ C

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Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

CHAPTER NO. 509

HOUSE BILL NO. 836

INTRODUCED BY SCULLY, ROTH

IN THE HOUSE

February 16, 1979	Introduced and referred to Committee on Judiciary.
February 20, 1979	Committee recommend bill do pass. Report adopted.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 20, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 22, 1979	Second reading, concurred in.
March 24, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 26, 1979	Returned from second house. Concurred in as amended.
	On motion consideration passed for the day.
March 28, 1979	On motion consideration passed for the day.

March 29, 1979	Second reading, amendments adopted.
March 30, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 836

INTRODUCED BY Sally Roth

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RESPONSIBILITY AND LIABILITY OF SKI AREA OPERATORS AND THE RESPONSIBILITY AND RISK BORNE BY SKIERS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is recognized that there are inherent risks in the sport of skiing that are essentially impossible to eliminate by the ski area operator but that should be known by the skier. It is the purpose of [this act] to define those areas of responsibility and affirmative acts for which the ski area operator is liable for loss, damage, or injury and those risks for which the skier expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Skier" means any person admitted to a ski area under the control of a ski area operator for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas and does not include the use of an aerial passenger tramway.

LC 1718/01

(2) "Ski slopes, trails, and areas" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

Section 3. Duties of operator regarding ski areas. A ski area operator shall:

(1) mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes, trails, and areas;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes;

(4) post a notice of the requirement for the use of ski-retention devices;

(5) designate by trail board or otherwise which trails or slopes are open or closed.

Section 4. Duties of operator with respect to passenger tramways. A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the department of administration.

HB 836
INTRODUCED BILL

Section 5. Duties of passenger. No passenger may:

(1) board or disembark from a passenger tramway except at an area designated for such purposes;

(2) throw or expel any object from a passenger tramway;

(3) commit an act that interferes with the running or operation of a passenger tramway;

(4) use a passenger tramway unless the passenger has the ability to use it safely without any instruction on its use by the operator;

(5) embark on a passenger tramway without the authority of the operator.

Section 6. Skier's assumption of responsibility -- duties. (1) A skier assumes the risk and all legal responsibility for injury to himself or loss of property that results from participating in the sport of skiing by virtue of his participation. The assumption of risk and responsibility includes but is not limited to injury or loss caused by the following: variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, other forms of forest growth or debris, lift towers and components thereof, pole lines, and plainly marked or visible snowmaking equipment.

(2) A skier is responsible for knowing the range of his own ability to ski any slope, trail, or area and for

skiing within the limits of his ability, skiing only on designated slopes and trails, maintaining control of speed and course at all times while skiing, heeding all posted warnings, and refraining from acting in a manner that may cause or contribute to the injury of anyone. The responsibility for collisions with a person or object while skiing, is the responsibility of the person or persons and not the responsibility of the ski area operator.

(3) A person who is skiing may not place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall, cross the track of a passenger tramway except at a designated and approved area, or if involved in a skiing accident, depart from the scene of the accident without leaving personal identification before notifying the proper authorities or obtaining assistance when the skier knows that a person involved in the accident is in need of medical or other assistance.

Section 7. Liability of ski area operator. A ski area operator is liable for loss or damages caused by failure to follow the provisions of [sections 3 and 4]. A ski area operator is not liable to any passenger or skier who acts in violation of those duties and responsibilities provided for in [sections 5 and 6]. A ski area operator is not liable for any injury or damage to a person in violation of 45-6-305.

Section 8. Liability of passenger. A passenger is liable for loss or damage resulting from violation of those duties provided for in [section 5] and may not recover any loss or damage suffered while acting in violation of [section 5].

Section 9. Liability of skier. A skier is liable for any loss or damage resulting from violation of those responsibilities provided for in [section 6] and may not recover any loss or damage suffered while acting in violation of [section 6].

Section 10. Effect of comparative negligence. Notwithstanding any comparative negligence law in this state, a person is, consistent with the provisions of [this act], barred from recovery for loss or damage resulting from any risk inherent in the sport of skiing, whenever it is established that a person has knowingly exposed himself to the real or potential hazards of a situation.

-End-

HB 836

HOUSE BILL NO. 861: Representative Scully turned the meeting over to Representative Teague, the Vice-chairman to present this bill.

The bill would remove the requirement that agencies reestablished after sunset review be subject to scheduled review every 6 years. There hasn't been any sunset yet and we should strike that after 6 years. What it does, is that in the sunset act, if any of the boards are reinstated and if you reinstate any board then after 6 years you can reexamine.

There was no discussion and no questions and the hearing closed on House Bill 861. Representative Teague continued with the chair so that Mr. Scully could present the following bill also.

HOUSE BILL NO. 836: Representative Scully. What this bill does is set forth the liability as it concerns the skiers and then it sets forth the liability of risk. Everyone recognizes that there is risk in the sport of skiing, and it is the purpose of this bill to define those areas of responsibility of the skier and the ski area operator.

PAT MELBY: Northern Ski Area Operators Association. What this bill does is simply to define the responsibility of the ski area.

BOB McDONALD: Bridger Bowl. In the 40's there was a federal decision that established the assumption of risk. It places the responsibility with the ski area over which they have control. It also sets the liability.

GEORGE WILLETTE: Shodown Ski Area. He passed out a fact sheet concerning skiing responsibility. The basic concern to us is the liability insurance rates and the increase in the cost. Without passage of a bill of this type, cost and availability of liability insurance could become prohibitive. We have approximately 20 to 30 employees and if we had to close down I don't know what they would do. If we could not get insurance we would have to terminate our operation.

PHIL HAUK: MONTANA Tramways Safety Board. We have a definite obligation to skiers and this bill would put the state obligation in proper perspective.

BILL DOWNS: I am representing the skiers, on the Board of Directors of the Northern Ski Area Association. Something that concerns us is the possibility of accident when a skier comes down the hill and hits another skier.

There were no questions and no discussion and the hearing closed on House Bill No. 836.

Representative Scully resumed the chairmanship of the meeting.

HOUSE BILL NO. 840: Representative McBride. This bill w provide for justice court jurisdicti over residential landlord-tenant disputes.

BOB PYFER: This bill does three things. It would give jurisdiction to the Justi Court Act, on page 2, lines 4 and 5. Second, on page 4, lines 19 through 24, extends the notice period for termination without caus from 30 days to 90 days for mobile homes. Third, this chapter exc as it relates to forcible detainer and as it relates to forcible entry does not apply to Chapter 24. Chapter 27 means that it does not apply to residential situation. He discussed the chapter rela to forcible entry. Enforceable detainer is not covered by the landlord-tenant act. It would not apply to residential property b only to commercial property.

BOB PALMER: Senator from Missoula. The landlord-tenant act passed last session and when we passed that act we had duplicate language. We have one ar of conflict, the 90 days for mobile homes. They had disagreed about 30 days and 90 days.

GAIL STOLTZ: Human Resource Council. We support the bill.

DIANA BURGESS: Greater Billings Tenants Rights Orga ization. We are here in support of House Bill No. 840. This bill would amend so that it would take precedence over the current 1977 act. She compared the old law an the new if it should pass. This would make it more feasible for the JP Court to work out landlord-tenant disputes.

WALTER JACKICH: Montana Landlords. We are for this bill and the part dealing with the justice courts and the unlawful detainer act. We are against the mobile home part, and the provision for 30 days and we propose tha that part be stricken.

JIM JENSON: The Justice of the Peace Court is written into this bill. We support this bill.

JERRY JOHNSON: MONTANA Coalition for Human Services Mr. Johnson read a letter from the Covered Wagon Tenants Association. I would like to make the commi

Senator Lensink questioned if that would be implied for a subcommittee and Mr. Meloy said sure.

Senator Healy questioned about meetings by telephone. Chad Smith stated that a meeting has to have a proper notice and they may make use of the telephone and there are cases where it is being done, but it usually is followed up by a meeting where they have proper minutes.

Senator Van Valkenburg asked if those telephone meetings are open to the public. Mr. Smith said that this is followed up by a regular notice and a meeting and he said the only time the open meeting law goes into effect is when you don't have an open meeting.

Senator Van Valkenburg stated that his point is that he would assume if a member of the public wanted to hear what was transpiring in a telephone meeting, that he would be entitled to listen in on that conversation. He stated that he understood that the Fish and Game Department does this on a regular basis. Mr. Smith stated that he did not know of any instance where that had been denied.

There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 836:

This is an act defining the responsibility and liability of ski area operators and the responsibility and risk borne by skiers. Pat Melby, representing the Northern Ski Area Operators Association, stated that he represented fourteen of the eighteen ski areas in the state. He stated that for years the ski area was responsible for negligent acts and the skier assumed some risk for the enjoyment of the sport. Now, he stated, there is substantial question nationwhide about the responsibility of the ski area and what the responsibility of the skier is. He testified that ski insurance premiums have skyrocketed and the cost to the skier has gone up tremendously and could continue to rise. He said that the question of liability is so open right now and is causing concern.

Bob MacDonald, the general manager at Bridger Bowl, in Bozeman, told of how in Vermont a skier went out of control, skied into a tree and was killed, and he said the doctrine of assumption of risk was established. Then Billy Sunday while skiing, fell and struck his head and is now a quadrapegic, he sued and now this question has been thrown into doubt throughout the country. He said that numerous sta tes have passed legislation in response to this - the responsibility of skiers for their own acts.

John Morrison, representing the National Ski Patrol System, Inc., stated that he has skied since the middle 1920s, when he had to make his own bindings and he was the first national ski patrolman in Montana. He stated that this bill, as written, is a good bill, that he had worked on the tramway bill, which was adopted eight or nine years ago. He said that he was vitally interested in ski safety but the skier has got to recognize conditions such as "flat light", etc.

George Willett, representing Showdown Ski Area in Nihart, gave a brief history of skiing. He stated that Montana has many big areas and many small areas and that one of the big costs is insurance, which may represent from 5 to 20 per cent of the gross receipts of a ski area. He said there are very few insurance companies that will insure small areas; and unless they are successful in enacting legislation which places the responsibility on the skier for getting himself down the mountain, that there are going to be more that are unable to obtain insurance at any price. He said that this will greatly increase the cost of a lift ticket in the state and in some cases, they will not be able to get insurance at all. He said if they had to close the Showdown Ski Area down, that this would greatly increase the number of unemployed in the Neihart Valley.

Bill Downs, representing the Northern Division of United States Ski Association, stated that they are the largest skier consumer group in the state with 1600 individual members in the state of Montana and their purpose

is to protect the skiing public. He stated that they are concerned over the escalating costs of skiing and skiing is 10 per cent of the gross income in the state of Montana. He said that skiing may soon come to where it will be run as private clubs for members only and that in some areas it is already like that.

Larry Roberts gave a prepared statement. (See Exhibit A.) He is president of the Belmont Ski Club out of Helena.

Roy Hickman, representing the National Ski Patrol System, Inc., gave a statement in support of this bill.

Phil Hauck, representing the Montana Passenger Tramway Safety Division, stated that the board voted unanimously to support this bill. He stated that in addition to the skier liability and the operator's liability, that the state, when they passed the tramway law, received considerable liability under the operation of a ski area. He defined the state's liability.

Dr. Bud Little, a businessman, medical practitioner, member of the Board of Directors of the U. S. Ski Association and a member of the Interenational Ski Federation, stated that he heard that this bill was going to be amended and he felt that amendments would take the guts out of this bill. He said he felt that primarily the skier himself has an assumption of risk and he stated that he sees this as a good bill, which would reduce the escalating costs of skiing.

There were no further proponents.

Mike Meloy, representing the Montana Trial Lawyers' Association, stated that of all the bills to be introduced this session to limit liability, he felt that this bill really wasn 't too bad. He stated there were some things about it that he thought he had an obligation to point out. He stated that Montana is a comparative negligence state; if an accident occurs, the jury considers whether he knew or did not know the rock was there, whether he would assume some risk because he engaged in the sport of skiing.

He stated that this bill changes that system - it says if the ski area operator does some things he isn't liable and if he does certain things, he is liable. If he follows all these duties and someone is injured, he is not liable and Mr. Meloy thought that they might want to consider the possibility of amending section 2 and section 3. He also stated that if there is a hazard that exists on a slope, such as a rock, etc., something that a ski operator knows about, if he doesn't mark it under this bill, he isn't responsible - he said that the problem is you are probably expanding duties too much and he did not know how to address that question. He also questioned the effect of section 10 - comparative negligence. He also made some comments in regard to the operation of a passenger tramway and he said that when a person gets on one of those things, he is pretty much subject to the control of the ski operator, and as long as the ski operator conforms with the regulations than he is free from any liability. He commented that he looked at those regulations and he could not tell if the case that occurred at Vail would be protected under this legislation. He said this case involved a situation where a gondola was being operated and they raised some kind of a safety bar in order to put more people on the gondola, and some people were killed. He said that in Montana, you would be relying on the safety regulations of the tramway act to say if this would be the case.

L. V. Harris, representing the Belmont Ski Club, stated that he was a charter member of the Montana Trial Lawyers Association and he was concerned that there was a decision such as the Sunday decision in Vermont. He stated that insurance companies are over-reacting. He also questioned that the Montana Trial Lawyers Association has taken the position as represented by Mr. Meloy. He stated that no one had been consulted in the association as to the stand on this bill, and he stated that there are many skiers in the association that would support this bill; and he did not find the problems in this bill that Mr. Meloy finds, that a hidden rock is assumed by the skier as part of the pleasure and adventure of the sport.

Mr. Meloy stated that he talked to Richard Bottomly, an official of the Montana Trial Lawyers Association, and he told him that this is the worse bill I have ever seen and to go at it as vigorously as he could.

Senator Towe asked Mr. Melby how he would respond to Mr. Meloy's feelings about section 7, page 4, line 20, wherein it states, "A ski area operator is liable for loss or damages caused by failure to follow the provisions of (sectins 3 and 4)." Mr. Melby stated that those types of things will be marked and if they are not marked, then the ski area operator would be liable. Senator Towe said irregardless of any contributory negligence on the skier's part - that that is the impact of this. There was some discussion on this.

Senator Towe said that if we strike liability in section 7, then he wondered about section 8 and 9. There was some discussion concerning liability if a person is injured when another skier runs into them.

Senator Brown questioned if, as Mr. Meloy indicated, Montana's regulations in connection with the tramway act would guarantee that a situation which occurred in Vail would be covered and he said that this was his major concern with the bill.

Mr. Hauck said that he did not think those circumstances would be applicable to this law but that they would be held negligent and responsible, when they circumvent the tramway act.

There was some further discussion and questions asked. Senator Towe stated that he thinks it is amistake to inject strict liability into this whole area where it does not belong - this is dynamite, he said. He thought they would want to keep the concept of contributory negligence and not go to strict negligence.

Senator Van Valkenburg stated that he did not know about the tramway act. He said that he would be inclined to think that the state might be liable for any accidents that might occur on lifts if the ski area operator was in compliance. Mr. Hauck said that he did not think so and he said that there is an overlap in liability - it overlaps in carrying that person up the hill. He stated that people have fallen out of chairs from just plain horsing around and it addresses this type of liability.

Senator Van Valkenburg stated that that scares him - that the state has liability and Mr. Hauck said that anytime you regulate, you assume liability. He asked if they are in compliance with the tramway regulations and an accident occurs on the left, are the ski operators immune from any suit under this bill. Mr. Melby stated that as long as the manufacturer was following the state of the art in the manufacture of the lift, as long as the tramway safety board is doing a prudent job and as long as the ski operator is operating in a reasonable and prudent manner in the operation of that lift, then there shouldn't be a question of liability unless the operator is negligent.

Senator Van Valkenburg questioned on page 3, lines 8, 9 and 10, what if he can use it safely with instruction. Mr. Melby stated that this particular section was not in it until we took it to the legislative council.

Senator Brown asked a question concerning section 4 and Mr. Melby said that there is nothing that says the ski operator cannot be liable, there will be an investigation by the insurance company and the trial lawyers are going to look to see if all standards are being met. Senator Brown questioned why section 4 is even needed. Senator Turnage said on page 4, in connection with 45-6-305.

There were no further questions or comments and the hearing on this bill was closed.

DISPOSAL OF HOUSE BILL 697:

Senator Turnage said that with this bill, it would be mandatory to have this in Lewis and Clark County. Senator Brown stated that with his amendment, if both parties agree, it might be changed. Senator Turnage stated that he should have the hearing right there in his home town.

Senator Brown moved that the bill be amended on page 3, line 1, after "hearing" strike "in Lewis and Clark county" and insert "shall be in the county of residence of the practitioner unless the practitioner and the board agree otherwise."

Senator Turnage asked what the present state of the law is and Mr. Meloy stated that under district court, the report shield law only applies to the reporter - it does not apply to his boss. He said that if a reporter gives information to his boss, his boss can be required to produce it and; he said that information that is on tapes belongs to the business as the tapes belong to the business.

Senator Brown moved that the bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 705:

Senator Van Valkenburg moved that the bill be concurred in. The motion carried unanimously.

DISPOSTION OF HOUSE BILL 836:

Senator Towe stated that this bill does not do what they intended it to do - not at all. He said that he would like to eliminate strict liability in this bill and he gave an example of a person drinking who is injured. He stated let's put contributory negligence back into the bill the way it ought to be. He further said that he found sections 8 and 9 most objectionable and what they really meant was limited liability to the passenger.

Senator Brown suggested that they read the Sunday case, as he would really like to know all the facts.

Senator Lensink said that slopes are not suppose to be as smooth as a billard table and ski areas cannot be expected to do that.

Senator Towe said that he is a little bothered about hidden hazards - if they know about it, they should mark the area. Senator Van Valkenburg stated that he would be more comfortable with the bill if it said that the assumption of risk applies to downhill skiers.

Senator Towe said that if an individual comes along in a ski area and they left a high stump, it snowed and some skier came plowing into that, that they should have some liability.

Senator Anderson stated that he thought Senator Van Valkenburg's remarks about assumption of risk is probably right.

Senator Lensink said that maybe we can get together with these people and see if we can work this bill out.

There being no further business, the meeting was adjourned at 11:28 a.m.

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

HOUSE OF REPRESENTATIVES
EXECUTIVE SESSION
JUDICIARY COMMITTEE
February 20, 1979

Following the regular meeting of the Judiciary Committee the members took a short break and then went into executive session to take action on pending bills. The meeting was called to order by Chairman Scully at 10:45 a.m. in room 436 of the Capitol Building on Tuesday, February 20. All members were present except Representative Day, excused to chair the Agriculture Committee.

HOUSE BILL NO. 797: Representative Rosenthal moved "do pass". The motion carried with the vote unanimous.

HOUSE BILL NO. 798: Representative Keyser moved "do not pass". There was lengthy discussion about the rules. It was decided that they could already inspect the jails and the law was not needed. The motion carried with Representati Rosenthal, Kemmis and Uhde voting "no".

HOUSE BILL NO. 799: Representative Rosenthal moved "do pass". The motion failed. Representative Keedy asked for a roll call vote on "do not pass". The motion carried with the vote 10 yes, 6 no and 3 absent.

HOUSE BILL NO. 803: Representative Anderson moved "do pass". There was discussion about the need for an amendment. Representative Anderson will offer it on the floor. The question was called and the motion passed with Representative Eudaily voting "no".

HOUSE BILL NO. 812: Representative Rosenthal moved "do pass". Representative Seifert moved a substitute motion, "do not pass". The motion carried with Representatives Kemmis, Pavlovich, Holmes, Teague and Keedy voting "no".

HOUSE BILL NO. 836: Representative Keyser moved "do pass" The motion carried with the vote unanimous.

HOUSE BILL NO. 820: Representative Conroy moved "do pass" The motion carried with the vote unanimous.

HOUSE BILL NO. 746: Representative Eudaily moved "do pass". The motion carried with the vote unanimous.

HOUSE BILL NO. 801: Representative Keyser moved "do pas The motion carried with the vote unanimous.

Date 3/7/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lonsink, Everett R., Chr. (R)	✓		
Olsen, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Colt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Reidy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Please sign in and leave for Secretary's records

SENATE Judiciary COMMITTEE

BILL _____ VISITORS' REGISTER DATE 3/9/

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Mike Meloy	MT. Wood Products Assn. MT. Logging Assn. MFA	303, 705, 836	303, 705	836
Bill Mercer	Montana Farmers Union	836 & 705	✓	
Hon. Ivan Swearingen	Asst. Lead Press	360	✓	
Robert S. MacDonald	Bozeman Trail	850	✓	
Larry Antrim	Belmont Ski Area	836	✓	
Jay Bruck	League of Montana Women Voters	705	✓	
Geo S Willett	Snowbowl Ski Area	836	✓	
William [illegible]	Montana Snowmobile Association / Ski Area	836	✓	
A Bal Gittle	MT Ski Assn / Intermtn Ski Education	836	✓	
L V Harris	Belmont Ski Club	836	✓	
Philip D. Petty	Belmont ski Area	836	✓	
Hal Erickson	Belmont Mtn Ski School	836	✓	
[illegible]	[illegible]	[illegible]	[illegible]	
Mike Merrill	[illegible]	[illegible]		✓
[illegible]	[illegible]	836	✓	
Wayne Buchanan	Mt. Sch. Bds	705	✓	
Tim Hall	County Attorneys	317		amend
Phil Hauck	Dept. of Admin.	836	✓	
[illegible]	Mont Ski Patrol Ski Instr	836	✓	
John H. Harrison	" " " " Bsf	836	✓	
D.A. Meloy	Montana Ski Area Operators Association	836	✓	
Steve Venzie	Mt. University Sys	705		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

BELMONT SKI AREA
P.O. Box 1090
Helena, MT 59601

My name is Larry Roberts, I am the President of the Belmont Ski Club and the Belmont Board of Trustees here in Helena.

The ski area is owned and operated by the club as a non-profit organization and has a membership of 1488 individuals.

Belmont, in comparison with the majority of other ski areas is quite small, however, we along with the other areas are experiencing a continuous growth of new skiers.

Since last year our Liability Insurance has increased at an astronomical rate of 20%. At the present time we are paying 10¢ on the dollar of our gross receipts.

Skiing, we recognize, is a hazardous sport and we feel that House Bill No. 836 "The Skier Responsibility Act" is a good Bill and is long over due and recommend that the Bill be approved in its original form without amendments.

Thank you.

March 7, 1979

The Honorable Senator, Jack Galt
Senate Judicary Committee
Room 331
State Capitol
Helena, Montana
59601

Dear Senator:

I would appreciate your consideration on voting on H.B. 836, The Skiing Responsibilty Act, to be in favor of this act, as drafted and without amendment. I direct the Belmont Mountain Ski School at the Belmont Ski Area. I also am a member of the Northern Rocky Mountain Ski Instructors Association. This organization is also in favor of this act, as drafted and without amendment.

The ski business in Montana is and has been growing at a healthy rate for a number of years. I am concerned that if this bill is not passed, as drafted, the ski industry would be in jeopardy with extremely high liability insurance rates and other costs.

The individual skier must accept the responsibilities for his own actions, As a ski teacher, I see a number of close calls from collisions frequently and these are soley due to the individual skiers errors and inconsiderations.

The inherent risks of skiing will always be there what with changing weather along with skier use. The responsibilities of the ski areas are well defined in the various safety codes established by State and Federal regulations as well as the insurance companies. The act proprosed,will enhance these responsibilities.

Again, I would appreciate your favorable vote on House Bill 836, as drafted and without amendment.

Sincerely Yours,

Hal Erickson, Director
Belmont Men. Ski School
1011 5th Ave 442-8246
Helena, Montana
59601

FACT SHEET

Skiing Responsibility Act

1. The main problem facing the ski industry nationwide is the problem of defining what responsibilities the skier has and what responsibilities the ski area has.

2. This act spells out responsibilities of skiers and ski area operators. It will serve as a skier education program. Skiers have a right to know what to expect and what is expected of them when they come to Montana to ski.

3. Ski areas in Montana attract approximately 750,000 skiers every ski season.

4. Approximately 30 percent of skiers visiting Montana ski areas are from out of state. Skiers are drawn primarily from Saskatchewan, Alberta, Idaho, Washington, Utah, Wyoming, Minnesota, North Dakota, South Dakota, and California.

5. An estimated $15,000,000.00 are spent each ski season at ski areas in Montana. This amount includes money spent at sports shops, cafeterias and restaurants, motels, ski rentals, lift tickets, and ski school lessons.

6. In addition, approximately $5,000,000.00 are spent at businesses surrounding the ski areas for accommodations, meals, gas, etc.

7. Ski areas help provide jobs both at the areas themselves and in surrounding towns.

8. Ski areas are a good source of revenue to the

taxing authorities. Montana ski areas pay a substantial sum of money to Federal, State, and other taxing agencies annually.

9. Since the Sunday decision against Stratton Mountain in Vermont, liability insurance rates nationwide have increased.

10. Without passage of a bill of this type, cost and availability of liability insurance for ski areas could become prohibitive, which could threaten the existence of ski areas in Montana. At the very least, it will cause the cost of skiing to rise substantially.

11. The United States Ski Association is the only nationally organized skiing consumers' union. The USSA has endorsed the concepts presented by this bill. Similar legislation has been passed in five other states (Maine, Vermont, New Hampshire, Washington, and Tennessee).

12. Similar legislation is under consideration in Utah and Wyoming.

Mr. Chairman, Members of the Senate Judicial Committee--

My name is William Downs, home address, 700 North Benton, Helena, Montana. I have been a citizen of Montana for the past 56 years. I am presently on the Board of Directors of the Northern Division of the United States Ski Association (NDUSSA) and I am representing the Division at this hearing on House Bill 836.

The Northern Division represents 22 ski clubs and approximately 1600 individual members within Montana, and is one of the 8 Divisions of the United States Ski Association. The prime purpose of the Northern Division is to protect and promote the consumer or skiing public as it pertains to the sport of skiing.

At the risk of repeting other testimony, I would like to point out that the Northern Division is greatly concerned over escalating costs of skiing. Insurance rates are at an all time high with premiums ranging as high as 10% of gross lift income. Because almost all ski areas are on public lands, liability insurance is mandated by the Federal Government. To make the ski areas responsible for total skiing participation is unnatural as skiing is inherently dangerous sport which in itself attracts people. Should insurance rates continue to climb skiing will become only for the more affluent or ski areas will be run as private clubs for members only.

Another important reason the Northern Division supports HB 836, is that the act defines one skiers responsibility towards another. This alone we feel, will make downhill skiing safer. We also feel the ski areas responsiblity to the individual skier has not lessened by this act.

Any ammendments to change the act which would increase ski area liability would greatly endanger the growth of skiing and ski industry which Montana can ill afford. Failure to pass the skiers responsibility act would also hinder the orderly growth of the sport, therefore the Northern Division of the United States

Ski Association at their mid-winter meeting, voted unanimously to support passage of House Bill 836.

Thank you for the privilege of presenting our views.

DISPOSITION OF HOUSE BILL 836:

Pat Melby, representing the Northern Ski Area Operators Association, gave an explanation of the proposed amendments to this bill, which is an act defining the responsibility and liability of ski area operators and the responsibility and risk borne by skiers.

Senator Towe wondered what would happen if a skier runs into a snow packer with its lights burned out. Mr. Melby stated that this would be under comparative negligence, and the skier would have to assume a risk of that. Senator Towe stated that it would appear to him that he is barred with recovery or portion of recovery and he stated that he did not have a clear picture. There was some discussion in regard to this.

Senator Turnage moved adoption of the amendments. The motion carried unanimously.

Senator Van Valkenburg moved that on page 3, line 8, following "tramway" insert "without seeking approval of the operator". There was much discussion on this motion. Senator Towe moved as a substitute motion that on page 3, line 10, following word "operator" insert "requests or receives instruction before boarding". The motion carried unanimously.

Senator Brown moved that on page 2, line 25, following the word "administration" the bill be amended by inserting "however, nothing in this section relieves an operator from taking whatever actions are necessary to properly construct, operate, maintain or repair a tramway." The motion carried unanimously.

Senator Turnage moved the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 774:

Senator Van Valkenburg introduced Karen Townsend, representing the Human Rights Commission and he stated she was a dissenter in the vote in connection with the Hutterite case.

Karen Townsend gave a statement in connection with this bill, which is an act to define marital status as used in the laws governing illegal discrimination and to exclude cohabitatio

Date 3/12/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. Â., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

Please sign at the desk

DATE [illegible]

COMMITTEE ON [illegible]

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Opp
Richard Manning	HB-565 Sponsor/Rep	565	✓	
Jim Mallon	Montana Coalition for Appropriate Services	565	✓	
Pat Melby	Northern Ski Area Operators Assn.	836	✓	
Carol Lockwood	Montana County Attorneys Office Human Rights Commission	652, 865 7-7	✓	

3-17-79

HB 836

2. Page 2, line 25.
Following: "administration."
Insert: "However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly control, operate, maintain, and repair a passenger tramway."

1. Page 1, line 24.
Following: "include"
Strike: "the use of"
Insert: "a person using"

3. Page 3, line 10.
Following: "operator"
Insert: "or requests and receives instructions before boarding"

EXHIBIT 2

AMENDMENTS

HB 836 (continued)

4. Page 4, line 19 through line 10 on page 5.
Strike: sections 7 through 9 in their entirety
Renumber: subsequent section

5. Page 5, lines 13 and 14.
Strike: ", consistent with the provisions of [this act],"

6. Page 5, line 14.
Following: "recovery"
Insert: "from a ski area operator"

7. Page 5, lines 15 through 17.
Following: "skiing" on line 15
Strike: remainder of line 15 through "situation" on line 1
Insert: "as described in [section 6]."

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 19, 1979

The sixty-third meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman on the above date in room 331 of the capitol building at 9:35 a.m.

ROLL CALL:

All members were present.

FINAL DISPOSITION OF HOUSE BILL 438:

Joan Mayer from the Legislative Council and attorney for the committee presented the amendments to this bill, and requested the committee to look over this amendment as she had changed the language somewhat. Senator Towe made a motion that we adopt the language as offered by Ms. Mayer. The motion carried unanimously. The bill had previously been voted to be concurred in as amended.

FINAL DISPOSITION OF HOUSE BILL 836:

This bill is an act defining the responsibility and liability of ski area operators and the responsibility and risk borne by skiers. Joan Mayer, attorney for the Legislative Council, stated that she had added an amendment on page 1, lines 24 and 25, where it says, "does not include the use of an aerial passenger tramway", that she changed it to say "a person using" an aerial passenger tramway.

Senator Towe moved that without objection this amendment be adopted. There was no objection.

Joan Mayer also stated that on page 2, line 25, she had reworded the material to read, "However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain and repair a passenger tramway." Senator Towe moved that this amendment be adopted without objection. There was no objection.

RECONSIDERATION OF ACTION ON HOUSE BILL 787 and HOUSE BILL 788

Joan Mayer from the Legislative Council stated that there were two amendments that were made on House Bill 788 that were not put on House Bill 787 and she wanted to make sure that the committee did not want them. She said that in section 14, did they want this on House Bill 787 also.

Date 2/8/79

ROLL CALL

JUDICIARY COMMITTEE - Workmen's

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S.A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

HB 836

1. Page 4, line 19 through line 10 on page 5.
Strike: sections 7 through 9 in their entirety
Renumber: subsequent section

2. Page 5, lines 13 and 14.
Strike: ", consistent with the provisions of [this act],"

3. Page 5, line 14.
Following: "recovery"
Insert: "from a ski area operator"

4. Page 5, lines 15 through 17.
Following: "skiing on line 15
Strike: remainder of line 15 through "situation" on line 1
Insert: "as described in [section 6]."

#62

STANDING COMMITTEE REPORT

March 19, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 836

Scully (Van Valkenburg)

Respectfully report as follows: That House Bill No. 836,
third reading bill, be amended as follows:

1. Page 1, line 24.
Following: "include"
Strike: "the use of"
Insert: "a person using"

2. Page 2, line 25.
Following: "administration."
Insert: "However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly constru operate, maintain, and repair a passenger tramway."

3. Page 3, line 10.
Following: "operator"
Insert: "or requests and receives instruction before boarding"

4. Page 4, line 19 through line 10 on page 5.
Strike: sections 7 through 9 in their entirety
Renumber: subsequent section
DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

5. Page 5, lines 13 and 14.
Strike: ", consistent with the provisions of [this act],"

6. Page 5, line 14.
Following: "recovery"
Insert: "from a ski area operator"

7. Page 5, lines 15 through 17.
Following: "skiing" on line 15
Strike: remainder of line 15 through "situation" on line 17
Insert: "as described in [section 6]"

And, as so amended,
BE CONCURRED IN

EVERETT R. LENSINK, Chairman.

HOUSE BILL NO. 836

INTRODUCED BY SCULLY, ROTH

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RESPONSIBILITY AND LIABILITY OF SKI AREA OPERATORS AND THE RESPONSIBILITY AND RISK BORNE BY SKIERS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is recognized that there are inherent risks in the sport of skiing that are essentially impossible to eliminate by the ski area operator but that should be known by the skier. It is the purpose of [this act] to define those areas of responsibility and affirmative acts for which the ski area operator is liable for loss, damage, or injury and those risks for which the skier expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Skier" means any person admitted to a ski area under the control of a ski area operator for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas and does not include the use of A PERSON USING an aerial passenger tramway.

(2) "Ski slopes, trails, and areas" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

Section 3. Duties of operator regarding ski areas. A ski area operator shall:

(1) mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes, trails, and areas;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes;

(4) post a notice of the requirement for the use of ski-retention devices;

(5) designate by trail board or otherwise which trails or slopes are open or closed.

Section 4. Duties of operator with respect to passenger tramways. A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the department of administration. HOWEVER, NOTHING IN THIS SECTION RELIEVES

REFERENCE BILL

AN OPERATOR FROM THE DUTY OF TAKING WHATEVER OTHER ACTIONS ARE NECESSARY TO PROPERLY CONSTRUCT, OPERATE, MAINTAIN, AND REPAIR A PASSENGER TRAMWAY.

Section 5. Duties of passenger. No passenger may:

(1) board or disembark from a passenger tramway except at an area designated for such purposes;

(2) throw or expel any object from a passenger tramway;

(3) commit an act that interferes with the running or operation of a passenger tramway;

(4) use a passenger tramway unless the passenger has the ability to use it safely without any instruction on its use by the operator OR REQUESTS AND RECEIVES INSTRUCTION BEFORE BOARDING;

(5) embark on a passenger tramway without the authority of the operator.

Section 6. Skier's assumption of responsibility -- duties. (1) A skier assumes the risk and all legal responsibility for injury to himself or loss of property that results from participating in the sport of skiing by virtue of his participation. The assumption of risk and responsibility includes but is not limited to injury or loss caused by the following: variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, other forms of forest growth or debris, lift towers and

components thereof, pole lines, and plainly marked or visible snowmaking equipment.

(2) A skier is responsible for knowing the range of his own ability to ski any slope, trail, or area and for skiing within the limits of his ability, skiing only on designated slopes and trails, maintaining control of speed and course at all times while skiing, heeding all posted warnings, and refraining from acting in a manner that may cause or contribute to the injury of anyone. The responsibility for collisions with a person or object while skiing, is the responsibility of the person or persons and not the responsibility of the ski area operator.

(3) A person who is skiing may not place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall, cross the track of a passenger tramway except at a designated and approved area, or if involved in a skiing accident, depart from the scene of the accident without leaving personal identification before notifying the proper authorities or obtaining assistance when the skier knows that a person involved in the accident is in need of medical or other assistance.

~~Section 7. Liability of ski area operators. A ski area operator is liable for loss or damages caused by failure to follow the provisions of [sections 3 and 4]. A ski area~~

operator is not liable to any passenger or skier who acts in violation of those duties and responsibilities provided for in [sections 5 and 6]. A ski area operator is not liable for any injury or damage to a person in violation of 45-6-305.

Section 8. Liability of passenger. A passenger is liable for loss or damage resulting from violation of those duties provided for in [section 5] and may not recover any loss or damage suffered while acting in violation of [section 5].

Section 9. Liability of skier. A skier is liable for any loss or damage resulting from violation of those responsibilities provided for in [section 6] and may not recover any loss or damage suffered while acting in violation of [section 6].

Section 7. Effect of comparative negligence. Notwithstanding any comparative negligence law in this state, a person is consistent with the provisions of [this act], barred from recovery FROM A SKI AREA OPERATOR for loss or damage resulting from any risk inherent in the sport of skiing, whenever it is established that a person has knowingly exposed himself to the real or potential hazards of a situation AS DESCRIBED IN [SECTION 6].

-End-